

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1523

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

- against -

JOSE GONZALEZ a/k/a "VALERIO
RESTREPO" and JOSE VINCENTE
CASTANO,

76-1523

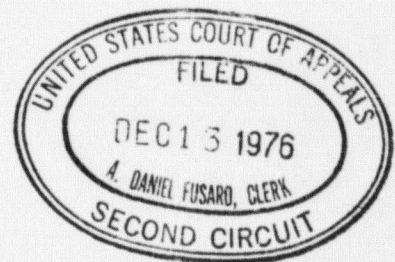
Defendants.
-----X

DEFENDANT-APPELLANTS'
APPENDIX

Frederic Lewis
Atty. for Gonzalez
30 Vesey Street
New York, New York

STUART R. SHAW
ATTORNEY AT LAW
600 MADISON AVENUE
NEW YORK, N. Y. 10022

(212) 755-5645



PAGINATION AS IN ORIGINAL COPY

APPENDIX TABLE OF CONTENTS

	<u>PAGE</u>
1. Index on appeal	A1
2. Docket sheet of defendant Castano	B1 - B2
3. Docket sheet of defendant Gonzalez	B3 - B4
4. Indictment	C1 - C3
5. Statements of defendant Castano before arraignments made to Assistant United States Attorney Alan Levine	D1 - D5
6. Pre-trial motions and affidavit on behalf of defendant Gonzalez	E1 - E5
7. Affidavit of Assistant United States Attorney Nathaniel Ackerman in opposition to defendants pre-trial motions	F1 - F4
8. Charge to the jury	G1 - G43

INDEX TO THE RECORD ON APPEAL

	Documents
Certified copy of docket sheet	A-D
Certified copy of indictment	1
Complaint and other magistrate's papers	2
Notice of appearances	3
Gov't notice of readiness for trial	4
Gov't request to charge	5
Defendant's request to charge	6
Notice of motion for judgement of acquittal on behalf of defendant, Costano	7
Notice of motion for judgement of acquittal on behalf of defendant, Gonzalea	8
Gov't affidavit in opposition to defendants' motions for judgement of acquittal	9
Memorandum and order filed by Hon. Charles Brieant which denied motions for acquittal	10
Judgement and Commitment Order for defendant Costano	11
Judgement and Commitment Order for defendant Gonzalez	12
Notice of appeal on behalf of Costano	13
Notice of appeal on behalf of Gonzalez	14
Transcript of proceedings, dated September 22,29,30, October 1,5,6, 1976	15
Clerk's Certificate	16

BEST COPY AVAILABLE

Clerk of the Court

0052	02- COSTANO, JOSE VINCENTE	07/23/76	76 0677 02
101	(LAST FIRST MIDDLE)	JUVENILE	02
11:840	OFFENSES CHARGED	ORIGINAL COUNTS	1
21:842,841	Consp. to viol. Fed. Narco. Laws. Distr. & possess. of Cocaine, II.		2
11/5			
INDICTMENT 20		ARRAIGNMENT	TRIAL
7-23-76		7-29-76	
MAGISTRATE		OUTCOME	
7/15/76		LB-08AH	
21 USC 842,841(a)(1) and 841(b)(1)(A); and 18 USC 2 - NARCOTICS			

Alan Levine
791-0932

ATTORNEYS Defense ☐ CJA ☐ Ret. ☐ W/owed ☐ Set ☐ Done / Other ☐ P.O. ☐ C.D.
Stuart Show, Esq.
600 Madison Ave., N.Y.C.

01-GONZALEZ

DATE	DOCUMENT NO.	PROCEEDINGS
7/15/76		Complaint filed, Jeffrey M. Rubin, Esq., 30 Vesey St., N.Y. assigned for bail only. Defendant remanded into the custody of U.S. Marshal in lieu of \$25,000 cash or surety.
7-16-76		Counsel assigned: Stuart Shaw, 600 Madison Ave., NYC.
7/23/76		Indictment filed, 76 Cr. 677
7-29-76		Deft. present (No Atty.) thru interpreter enters a plea of not guilty. Bail fixed in the amount of \$25,000 be continued. Deft. remanded in lieu of bail..Case assigned to Briant, J..Conner, J.
8-23-76		Filed Govt's Notice of Readiness for Trial.
9-1-76		Filed Deft's affidavit & Notice of Motion for pre-trial relief; severance of the trial of the Deft from that of any other Deft, an order prohibiting the U.S. from using in evidence, and as so further indicated.
9-8-76		Filed Notice of Appearance of Atty, Fredric Lewis, 30 Vesey St, NYC 10007.
9-16-76		Filed Govt's affidavit in response to motions filed by the deft
10-4-76		Filed Deft's Request to Charge.
10-4-76		Filed Govt's Requests to Charge.

BI

A. W. V. B. B. B.
Clerk of the Court

PROCEEDINGS (continued) ANY OCCURRENCE OF EXCESSIVE DELAY FEELING TO BE NOTED

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

(Atty present Stuart Shaw). Suppression hearing begun & concluded. Motion DENIED. Trial set for 10-29-76. Remanded in lieu of Bail.

Atty & Atty. (Stewart Shaw) present. Interpreter.

TRIAL BEGUN.

TRIAL Cont'd.

TRIAL Cont'd.

TRIAL Cont'd.

TRIAL cont'd & concluded. Jury Verdict: Deft GUILTY on COUNTS 1 & 2 as charged. P.S.I. ordered. Sentence adj'd to 11-4-76. Deft, Bail \$40,000. - REMANDED.....BRIDGEMAN, J.

Filed Deft's Motion for a Judgment of acquittal...ret 11-4-76-9:15 AM

Filed affidavit of Nathaniel H. Akerman, AUSA, in opposition to Deft's motion for an order for a judgment of acquittal.

Filed MEMORANDUM AND ORDER- Following their conviction, Deft's have each moved by separate notices of motion for a judgment of acquittal pursuant to Rule 29(c), F.R.Cr.P., or alternatively, for a new trial. Motions are in all respects denied. SO ORDERED.BRIDGEMAN, J. (n/n 11-05-76)

Filed Judgment & Commitment Order- The Deft is hereby committed to the custody of the Atty General for imprisonment for a period of EIGHT (8) YEARS on each of COUNTS 1, and 2, to run concurrently with each other. Pursuant to Section 4205(b)(2) of Title 18, U.S. Code, Deft shall become eligible for parole at such time as the Parole Commission may determine. Pursuant to Section 841 of Title 21, U.S. Code, Deft is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement. REMANDED.....BRIDGEMAN, J.

Filed Deft's Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the final Judgment of 11-04-76.... Leave to proceed on Appeal in Forma Pauperis is GRANTED....BRIDGEMAN, J.

Filed transcript of proceedings dated Sept. 22, 29, 30, Oct. 1, 5 & 6-1976.

A TRUE COPY
JACOB F. BURSTARDT, CLERK
By *[Signature]*
Deputy Clerk

FILE AND RECEIPT CLERK'S COMMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	RECEIPT NUMBER	C.D. NUMBER

Raymond F. Bigher
Clerk of the Court

WICKER - U.S. District Court

0852

01 - CONZALEZ, JOSE A.
a/k/a Valerio Restrepo

Case Filed
Mo. Day

07 23

76

0677

01

JUVENILE

02

U.S. MAG. CASE NO. 76-801

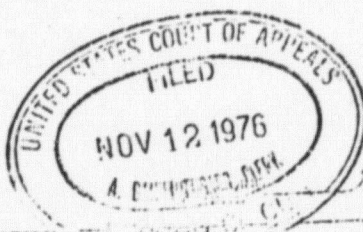
OFFENSES CHARGED

Consp. to viol. Fed. Harco. Laws.
Distr. & possess. of Cocaine, II.

ORIGINAL COUNTS

1

2



INDICTMENT

ARRAIGNMENT

Trial Set For

Ver. Dire

7-23-76

7-29-76

ING G LING

G. Plea W/Draw

Trial Begun

Trial Ended

MAGISTRATE

INITIAL/NO.

OUTCOME

INITIAL APPEARANCE DATE 7/15/76

LB-08AH

PRELIMINARY EXAMINATION OR

REMOVAL HEARING

DATE SCHEDULED 7/23/76

DATE HOLD

WAIVED X NOT WAIVED

INTERVENING INDICTMENT

DISMISSED

HELD FOR GOVT. OR OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GOVT. OR OTHER PROCEEDING IN DISTRICT

7/15/76 LB-08AH

21 USC 812, 841(a)(1) and 841(b)(1)(A) and 18 USC 2

ATTORNEYS

Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self. ☐ None / Other ☐ Pro. ☐ Def.

John Curley, Esq.
Legal Aid Society

Alan Levine
791-0932

02-COSTANO

DATE

7/15/76

7/23/76

7/23/76

7-29-76

8-23-76

8-23-76

9-10-76

9-16-76

10-4-76

9-27-76

PROCEEDINGS

Complaint filed, Legal Aid assigned. Defendant remanded into the custody of U.S. Marshal in lieu of \$25,000 cash or surety. Notice of Appearance filed by Franklyn Could, Esq., 401 Broadway, N.Y. Indictment filed, 76 Cr. 677

Def't. (Atty. present) thru interpreter enters a not guilty plea. 10 days for motions. Bail remains as fixed in the sum of \$25,000. Def't. remanded in lieu of bail. Trial 50 days. Assigned to Briant, J., Conner, J.

Filed Notice of Appearance of Atty, Franklyn Could, 401 Broadway, NY. Tel: 966-6845.

Filed Gov't's Notice of Readiness for Trial.

Filed Def't's affdvt & Notice of Motion for an order directing a severance of the trial, suppressing any conversations, etc. Ret: 9-13-76.

Filed Gov't's affd in response to motions filed by the def't

Filed Gov't's Requests to Charge.

Def't & Atty (Lee Robbins) present. Interpreter. JURY TRIAL BEGUN.

EXCLUDABLE DELAY

B3

W. Raymond F. Bayless
Clerk of the Court

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

11-1-76 Cont'd.
11-1-76 Cont'd.
11-1-76 Cont'd.
11-1-76 Cont'd & concluded. Jury Verdict: Deft GUILTY on COUNTS 1 & #2 as charged. P.S.I. Ordered. Sentence adj'd to 11-1-76. \$50,000. - REMANDED.....BRYANT, J.

11-27-76 Filed Motion for an order for a judg. of acquittal... ret 10-27-76

11-27-76

Filed a motion of Nathaniel H. Akerman, AUSA, in opposition to Deft's motion for an order for a judgment of acquittal.

11-27-76 Filed MEMORANDUM & ORDER. Following their conviction, Deft's motion is denied by the court's motion of motion for a judgment of acquittal pursuant to Rule 29(e), F.R.Crim.P., or alternatively, a new trial. Motions are in all respect denied. SO ORDERED. BRYANT, J. (m/a 11805-76)

11-27-76 Filed Judgment & Commitment Order: The Deft is hereby committed to the custody of the Atty General for Imprisonment for a period of TEN (10) YEARS on each of COUNTS 1 and 2, to run concurrently with each other. Pursuant to Section 841 of Title 18, U.S. Code, Deft is placed on Special Parole for a period of THREE (3) YEARS, to commence upon expiration of confinement. Pursuant to Section 4205(b)(2), of Title 18, U.S. Code, Deft shall become eligible for parole at such time as the Parole Commission may determine. REMANDED.....BRYANT, J.

11-27-76 Filed Deft's Notice of Appeal to the U.S.C.A. for the 2nd Circuit from the final Judgment of 11-01-76.....Leave to proceed on Appeal in Forma Pauperis is GRANTED.....BRYANT, J.

11-27-76 Filed transcript of proceedings dated Sept. 22, 29, 30 Oct. 1, 5 & 6-1976.

RECEIPT AND DISTRIBUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

B4

AL:kco

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSE GONZALEZ, a/k/a Valerio Restrepo,
and JOSE VINCENTE COSTANO,

Defendant .

INDICTMENT

76 Cr.

COUNT ONE

The Grand Jury charges:

1. From on or about the 1st day of January, 1976
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of
New York, JOSE GONZALEZ, a/k/a Valerio Restrepo
and JOSE VINCENTE COSTANO,

the defendant, and others to the Grand Jury unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confederate
and agreed together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said
defendant, unlawfully, intentionally and knowingly would distribute
and possess with intent to distribute Schedule I and II
narcotic drug controlled substances the exact amount thereof
being to the Grand Jury unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

C-1

OVERT ACTS

C-2

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

1. On or about July 14, 1976, in the Southern District of New York, JOSE GONZALEZ, a/k/a Valerio Pastrepo, the defendant, made a telephone call at approximately 11:50 P.M. from a public telephone booth in the vicinity of the northeast corner of 52nd Street and 8th Avenue, New York, New York.

2. On or about July 15, 1976, in the Southern District of New York, JOSE VINCENTE COSTANO, the defendant, departed 305 East 24th Street, Apartment 19C at approximately 12:00 midnight.

3. On or about July 15, 1976, in the Southern District of New York, JOSE VINCENTE COSTANO, the defendant, possessed approximately 9 ounces of cocaine in the vicinity of 51st Street and 8th Avenue, New York, New York at approximately 12:20 A.M.

(Title 21, United States Code, Section 846)

C-3
COUNT TWO

The Grand Jury further charges:

On or about the 15th day of July, 1976
in the Southern District of New York,

JOSE GONZALEZ, a/k/a Valerio Restrepo and
JOSE VINCENTE COSTANO,

the defendant , unlawfully, intentionally and knowingly
did distribute and possess with intent to distribute a
Schedule II narcotic drug controlled substance, to wit,
approximately 9 ounces of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).) Title 18, United
States Code, Section 2)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

STATEMENT OF DEFENDANT BEFORE ARRAIGNMENT
MADE TO ASSISTANT UNITED STATES ATTORNEY

Date: July 18, 1944

Time Interview Commenced: _____ a.m. 2.00 p.m.

Q My name is John Lewis, I am an Assistant
United States Attorney. You have been arrested for a
violation of Section 884(d)
which relates to possession of arms & explosives
In a few minutes you will be taken before the United
States Magistrate who will fix bail in your case.
Do you understand that?

A

Yes.

Q You have a constitutional right to refuse to answer any of
my questions. Do you understand that?

A

Yes.

Q You have an absolute right to remain silent, and if you choose to answer any questions, any statement you do make can be used against you in a court of law. Do you understand that?

A

Yes.

Q You have a right to consult an attorney and to have that attorney present during this interview. Do you understand that?

A

Yes.

Q If you do not have funds to retain an attorney an attorney will be appointed to represent you and you do not have to answer any questions before this attorney is appointed and you can consult with him. Do you understand that?

A.

Yes.

Q Would you like to answer some questions about your background? You may pick and choose those questions you wish to answer, and you may stop at any time.

Yes.

D1

NAME: *John J. [unclear]*

DOB: *1/1/1911*

MARITAL STATUS: *Married*

SOCIAL SECURITY NUMBER: *1-1-1*

SPOUSE: *ARA [unclear]*

DOB: *7*

CHILDREN: *3 [unclear]*

ADDRESS: *100 [unclear]*

APT. *100*

RENT: *100*

BEGAN LIVING THERE: *1940*

HOME TELEPHONE: *100*

PREVIOUS ADDRESS: *100 [unclear]*

DATES: *1940-1941*

EMPLOYED: *100*

HOW LONG: *100*

BUS. PHONE: *100*

WAGES: *100*

BEST COPY AVAILABLE

PREVIOUS EMPLOYMENT:

WAGES:

PARENTS: *Estelle Anthony* ADDRESS: *Montreal, Quebec*

WHO RESIDES WITH YOU?

Have you ever been to the U.S. before?
No

WELFARE?
FOOD STAMPS?
UNEMPLOYMENT?

SELF:
AMOUNT:

SPOUSE

PROGRAM:
LOCATION:

ARRESTS: -1- -2- -3- -4-

PLACE

CHARGE

DISPOSITION *No*

SENTENCE

TIME SERVED

PROBATION

EDUCATION:

YEARS: *8th Grade*
WHERE: *Canada*

CURRENT MEDICAL PROBLEMS:

PHYSICAL:

MENTAL:

HAVE YOU TAKEN OR ARE YOU NOW TAKING DRUGS?

ADDICT?

EVER ADDICTED?

WHAT DRUG?

DRUG PROGRAM?

ALCOHOL?

HEROIN (/) COCAINE (/)

MARIJUANA OR HASHISH (/)

AMPHETAMINES (/),

METHADONE (/),

LSD (/), OTHER:

DO YOU (OR YOUR SPOUSE) HAVE ANY BANK ACCOUNT?

WHERE:

FINANCIAL:

CASH ON PERSON

SAVINGS

STOCKS OR BONDS

CAR

HOUSE

OTHER PROPERTY

DOES YOUR SPOUSE WORK?

WHERE?

CITIZEN OF: Columbia

ENTRY TO U.S. DATE: 4 days ago

PLACE OF BIRTH: Puerto Rico

PORT OF ENTRY: P.R. Office

ALIEN REGISTRATION NUMBER:

REGISTERED WITH SELECTIVE SERVICE?

HAVE YOU EVER SERVED IN THE ARMED FORCES?

WHEN?

TYPE OF DISCHARGE?

DO YOU HAVE ANY RELATIVES IN N. Y. AREA, OTHER THAN THOSE MENTIONED ABOVE?

NAME:

ADDRESS:

D-3

WHERE WERE YOU ARRESTED?

WHERE?

DO YOU HAVE ANY COMPLAINTS ABOUT THE WAY THE AGENTS TREATED YOU?

WOULD YOU LIKE TO TELL ME WHAT HAPPENED?

Yes. He told me on the
boat that he was on my way

I had a bag which was wrapped in a paper
and they captured me and said it was
mine.

Q: Where did you get it?

A: This man told me he was going to give me a
job and I should get in this car and take
it to the station and I should wait
for him there if this package -

Q: What kind of job?

A: Work as a plaster man.

Q: Which man?

A: Tall man who said he would give me a job.

Q: What is the ^{name of the} man outside?

A: Jose Gonzalez.

Q: Were you living with him?

A: No, he had given me refuge for the last night.

Q: Where did you meet him?

A: Park around here.

Q: He wasn't going to give me the job - another

gentleman.

Q: From whom did you get the job?

A: Jimmy Ortiz.

Q: Do you know Jimmy Ortiz?

A: I don't want to talk anyone. He is tall.

Form No. USA 32a-306 p. 5

DEFENDANT'S STATEMENT - Continued.

Translator: [Signature]

TIME INTERVIEW TERMINATED: _____ a.m. 2:00 p.m.

WITNESSED: ASSISTANT U. S. ATTORNEY Alan Lom

AGENTS: Richard H. Campbell

BAIL RECOMMENDED:

\$50,000 C/S

BAIL SET BY MAGISTRATE:

\$25,000 C/S

POSSIBLE BAIL SUGGESTED
BY DEFENDANT:

TIME OF
ARRAIGNMENT: _____ a.m. 4:15 p.m.

HEARING:

July 23, 1970

LAWYER Jeffrey Rubin

55 West Street

BAIL WARNINGS GIVEN?

TELEPHONE 732-6313

APPOINTED OR RETAINED (CIRCLE ONE)

D5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-vs-

JOSE GONZALEZ and JOSE V. COSTANO,
Defendants.

NOTICE OF MOTION

INDICTMENT No.

76 Cr. 677

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of FREDRIC LEWIS, ESQ., duly affirmed the 9th day of September, 1976, and upon all the papers and proceedings heretofore had herein, the undersigned will move this Court, before the HON. CHARLES L. BRIEANT, to be held at the Federal Courthouse located at Foley Square, Borough of Manhattan, City and State of New York, on the 13th day of September, 1976, at 10:00 A.M., or as soon thereafter as counsel may be heard:

I. For an order directing a severance of the trials of the defendants herein.

II. For an order suppressing any conversations or statements allegedly made by the defendant JOSE GONZALEZ to S/A CRAWFORD of SCI -6-0163 or anyone else in connection with the charges herein or the arrest of the defendant.

LUSA
Filed w/ Ct
9/10/76

E1

III. For an order suppressing any alleged contraband or narcotic or controlled substance allegedly received or seized by the People in connection with the charges herein against JOSE V. GONZALEZ. And for a hearing to determine the legality of any seizure of property and or the legality of admissibility of any conversations.

IV. For an inspection of the Grand Jury minutes by the Court and a dismissal of Count I and or Count II of the indictment, and for such other and further relief as to the the Court may seem just and proper.

Dated: New York, N.Y.
September 9, 1976

Yours, etc.,

FREDRIC LEWIS
Attorney for Defendant
JOSE GONZALEZ
Office & P.O. Address
30 Vesey Street
New York, N.Y. 10007
Tel. # 349-7300

TO:

HON. THOMAS J. CAHILL
U.S. Attorney for the
Southern District of New
York
1 St. Andrews Plaza
New York, N.Y.

STUART SHAW
Attorney for Defendant
JOSE V. COSTANO
600 Madison Avenue
New York, N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-VS-

JOSE GONZALEZ and JOSE V. COSTANO,

Defendants.

-----X

FREDRIC LEWIS, ESQ., an attorney at law duly licensed and admitted to practice before the District Court of the Southern District of New York, does hereby affirm under the penalties of perjury that the following statements are true unless stated to be on information and belief, based on an examination of your deponents file herein and discussions had with the defendant JOSE GONZALEZ.

I. I am the attorney for the defendant JOSE GONZALEZ herein. I am familiar with the facts and circumstances herein.

II. That this affirmation is made in support of the within motions.

III. That the defendant JOSE GONZALEZ, was indicted and charged with conspiracy to possess and distribute a controlled substance; and was further charged with possessing and distributing a controlled substance.

IV. That the defendant JOSE GONZALEZ was arraigned and pleaded not guilty.

V. That the defendant JOSE GONZALEZ seeks a severance of the trial herein from the defendant JOSE V. COSTANO in that evidence against the said defendant JOSE V. COSTANO though not applicable to the defendant JOSE GONZALEZ will inure to the detriment of the defendant JOSE GONZALEZ. Specifically it is charged by the Government that Mr. Costano was arrested with drugs in his possession. The presentation of such drugs in the case against Mr. Costano will seriously prejudice the jury's mind against Mr. Gonzalez. Further upon information and belief it is the intention of the Government to use statements and or admissions of the defendant JOSE V. COSTANO and the defendant JOSE GONZALEZ would not be bound by such statements yet he would be prevented from confronting his accuser who could not be made to take the stand and testify.

VI. That all conversations allegedly relating to SCI-6-0163 and S/A CRAWFORD and the defendants herein should be suppressed wherein defendant will be denied a confrontation with SCI 6-0163.

VII. That all alleged controlled substances be suppressed in that proposed Exhibit I relates to SCI 6-0163 who upon information and belief will not be produced or identified.

and proposed government exhibit #2 was recovered from the defendant Costano not the defendant Gonzalez and is too remote and prejudicial to be permitted in evidence in a trial against JOSE GONZALEZ.

VIII. That the indictment should be dismissed against the defendant JOSE GONZALEZ based upon a reading of the Grand Jury Minutes by the Court. In reading the Investigative reports of the Government it is clear that Count II of the indictment should be dismissed and it is felt by your deponent that Count I should also be dismissed if the Grand Jury Testimony was similar to the reports of S/A CRAWFORD.

Dated: New York, N.Y.
September 9, 1976

FREDRIC LEWIS

NHA:jm
n-2643

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

F.L.

UNITED STATES OF AMERICA

: AFFIDAVIT

- v -

: 76 Cr. 677

JOSE GONZALEZ, a/k/a
Valerio Restrepo, and
JOSE VINCENTE COSTANO,

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK)
SOUTHERN DISTRICT OF NEW YORK)

SS-1

NATHANIEL H. AKERMAN, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in
the office of Robert B. Fiske, Jr., United States Attorney
for the Southern District of New York, and as such I have

been assigned responsibility for the above-captioned matter, and I am fully familiar with the papers and prior proceedings relating to this matter.

2. I make this affidavit in response to motions filed by the defendants Gonzalez and Costano.

RULE 16 OF THE FEDERAL
RULES OF CRIMINAL PROCEDURE

3. The Government has provided the defendants with all discoverable materials set forth in Rule 16 of the Federal Rules of Criminal Procedure.

4. No electronic surveillance was conducted of either defendant.

DEFENDANTS GONZALEZ'S AND COSTANO'S
MOTION FOR A SEVERANCE

5. The Government opposes the defendants' motion for a severance. The law is clear that a severance should not be granted merely because a defendant claims he will be prejudiced by being associated with a co-defendant at trial.

United States v. Myers, 406 F. 2d 746, 747 (4th Cir. 1969); United States v. Crisona, 271 F. Supp. 150, 155 (S.D.N.Y. 1967). Furthermore, the Government does not intend to offer at trial any statements inadmissible under Bruton v. United States, 391 U. S. 123 (1968).

DEFENDANT COSTANO'S REQUEST
FOR A BILL OF PARTICULARS

6. The Government opposes every request in defendant Costano's Bill of Particulars on the grounds that the defendant is seeking the evidentiary details of the Government's case; United States v. Lebron, 222 F. 2d 531, 535-36 (2d Cir.) cert. denied, 350 U. S. 876 (1955); United States v. Kushner, 135 F. 2d 668 (2d Cir.) cert. denied, 320 U. S. 212 (1943), and disclosure of the Government's legal theory of the case; United States v. Kelley, 254 F. Supp. 9 (S.D.N.Y. 1966); United States v. Verra, 203 F. Supp. 87, 92 (S.D.N.Y. 1962); United States v. Fruehauf, 196 F. Supp. 198 (S.D.N.Y. 1961); United States v. Schillaci, 166 F. Supp. 303, 307 (S.D.N.Y. 1958).

DEFENDANT COSTANO'S MOTION FOR
A PRE-TRIAL HEARING ON STATE-
MENTS BY THE DEFENDANTS, SEARCHES
AND SEIZURES, AND EYEWITNESS
IDENTIFICATIONS

7. The Government opposes the holding of hearings since the defendant Costano has not submitted an affidavit alleging any fact which if true might form a basis for relief. A defendant does not have the right to an evidentiary hearing if his moving papers do not state facts which, if proved, would be sufficient to require relief. See United States v. Culotta, 413 F. 2d 1343, 1345 (2d Cir.) cert. denied, 396 U. S. 1019 (1969); Grand v. United States, 282 F. 2d 165, 170 (2d Cir. 1960); United States v. Gardner, 308 F. Supp. 425, 427 n. 1 (S.D.N.Y. 1969); United States v. Stonchill, 254 F. Supp. 1003, 1005 (S.D.N.Y. 1966) United States v. Casanova, 213 F. Supp. 654 (S.D.N.Y. 1963).

RECEIVED
NIA:DJ
n-2641

DEFENDANT COSTANO'S MOTION
TO DISMISS THE INDICTMENT
FOR DENIAL OF HIS RIGHTS
TO A SPEEDY TRIAL

8. The Government opposes defendant Costano's motion for dismissal of the Indictment for denial of his rights under the Speedy Trial Act. There are absolutely no facts to support such a claim, and the defendant has cited none.

DEFENDANT COSTANO'S MOTION FOR
INFORMATION ON PROSPECTIVE JURORS

9. The Government does not intend to utilize any tax information of prospective jurors.

DEFENDANT GONZALEZ'S MOTION TO
SUPPRESS ALL CONTROLLED SUBSTANCES

10. The Government opposes defendant Gonzalez's motion to suppress the controlled substances in so far as it relates to the 9 ounces of cocaine seized from the defendant Costano on July 15, 1976. The Indictment charges in Count One that defendants Gonzalez and Costano conspired to distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances. Overt Act three charges that defendant Costano possessed the 9 ounces of cocaine on July 15, 1976. It is beyond dispute that evidence of an overt act in furtherance of the conspiracy is admissible against all members of the conspiracy.

Count Two of the Indictment charges both defendants with possession of the nine ounces of cocaine and aiding and abetting. The 9 ounces of cocaine are admissible against defendant Gonzalez in Count Two since he constructively possessed the cocaine and aided and abetted the defendant Gonzalez in his actual possession of the cocaine.

HA:BJ
-2641

DEFENDANT GONZALEZ'S MOTION
TO DISMISS THE INDICTMENT

F4

11. The Government opposes the defendant Gonzalez's motion to dismiss the Indictment. The defendant has stated absolutely no ground for such a dismissal.

DEFENDANT GONZALEZ'S MOTION FOR
PRODUCTION OF GRAND JURY MINUTES

12. The Government will turn over the minutes of the grand jury relating to this case as soon as they are transcribed.

NATHANIEL H. AKERMAN
Assistant United States Attorney

Sworn to before me this
day of September, 1976.

BEST COPY AVAILABLE

Charge

lhjb 1 627

(In open court, jury not present.)

THE COURT: I have had the court reporter read back to me the rebuttal summation again. I find no error insofar as concerns Mr. Castano. Insofar as Mr. Gonzalez is concerned, I would grant the motion for a mistrial but for the fact that the same set of keys are amply tied in with him by real evidence, including the keys themselves and the fact that they work in his locks.

I think in the entire context of the case, it does not rise to a level as to require the court to stop the trial and grant a mistrial. It certainly is no basis for dismissing the indictment.

For those reasons, I will deny the motion and allow the case to go to the jury as to both defendants. You may have an exception as to that.

MR. ROBBINS: I respectfully except, your Honor.

MR. SHAW: One covers the other?

THE COURT: Certainly. Bring in the jury.

(Jury present.)

THE COURT: Miss Fondel, members of the jury: We are now at that stage in the trial where you will soon undertake your final function as jurors, and hear you perform one of the most sacred obligations of citizenship, and that is acting as ministers of justice. You are to discharge this

1 lhjb 2 628

2 final duty in an attitude of complete fairness and impar-
3 tiality, and, as I emphasized when you were first selected,
4 without bias or prejudice, for or against the government
5 or any defendant as parties to this controversy.

6 Let me state the fact that the government is a
7 party here entitles it to no greater consideration than
8 that accorded to any other party to a litigation. By the
9 same token, it is entitled to no less consideration. All
10 parties, individuals and government alike, stand as equals
11 before the bar of justice in this court.

12 Your final role here is to decide and pass upon
13 the fact issues in this case. You are the sole and exclu-
14 sive judges of the fact. You determine the weight of the
15 evidence, you appraise the credibility or truthfulness of
16 the witnesses, and you draw the reasonable inferences or
17 conclusions from the evidence, and you resolve such con-
18 flicts as there may be in the evidence.

19 My final function here is to instruct you as to
20 the law, and it is your duty to accept these instructions
21 as to the law and apply them to the facts of the case as
22 you may find them to be. You are not to consider any single
23 instruction which I give you alone as stating the law, but
24 you must consider all of my instructions taken together as
25 a whole.

1 lhjb 3 629

2 As I told you earlier, with respect to any fact
3 matter, it is your recollection and yours alone that governs.
4 Anything that the lawyers, either for the government or a
5 defendant, may have said with respect to matters in evi-
6 dence, whether during their opening statement or during the
7 trial, in questioning or in argument or summations, is not
8 to be substituted for your own recollection of the evidence.

9 So too, anything that I might say during the trial
10 or anything that I might refer to during the course of these
11 instructions as to any matter in evidence is not to be taken
12 in place of your own recollection.

13 The attorneys each not only have their right but
14 it is their duty to make objections and make arguments and
15 present whatever legal theories they may have. They are
16 simply performing their duty. Any evidence as to which an
17 objection was sustained by the court and any evidence or
18 argument ordered stricken out by the court must be dis-
19 regarded in its entirety. Put out of your mind any exchanges
20 which may have occurred during the trial between the lawyers
21 or between any attorney and the court.

22 It is not my function to favor one side or the
23 other or to criticize anybody in any way whatsoever or indi-
24 cate to you, the jury, that I have any opinion as to the
25 credibility of any witness or as to the guilt or innocence

1 lhjb 4 630

2 of either defendant. That is your function. It is yours
3 alone. I leave it entirely to you.

4 So please don't assume that I hold any opinion in
5 any matters concerning this case. Please don't reach any
6 conclusion that I may have some attitude or that I may tend
7 to favor one side or the other in the case. I do not. Of
8 course, the indictment here itself is no evidence of the
9 crimes charged.

10 Instead, an indictment is merely the method or
11 procedure under the law whereby persons accused of crimes
12 by a grand jury are brought into court to have their case
13 determined by a trial jury, such as yourselves. Therefore,
14 the indictment must be given no evidentiary value, but
15 shall be treated by you only as an accusation. It is not
16 evidence or proof of a defendant's guilt, and no weight or
17 significance whatsoever is to be given to the fact that an
18 indictment has been returned against the defendants.

19 They each pleaded not guilty, and thus the govern-
20 ment has the burden of proving the charges beyond a reason-
21 able doubt. A defendant does not have to prove his innocence
22 On the contrary, he is presumed to be innocent of the accu-
23 sations contained in the indictment. This presumption of
24 innocence was in his favor at the start of the trial, as
25 I believe I told you before, it continued in his favor

1 lhjb 5 631

2 throughout the entire trial, and it is in his favor now
3 and remains in his favor during the course of your deliber-
4 ations in the jury room, and the presumption of innocence
5 is removed only if and when you, the jury, are satisfied
6 that the government has sustained its burden of proving the
7 the guilt of the defendant beyond a reasonable doubt.

8 Of course, unless you are so convinced as to any
9 particular defendant on any particular count, you must find
10 that defendant not guilty of that particular count. The
11 question naturally comes up, what is a reasonable doubt?

12 Members of the jury, these words almost define
13 themselves. It is a doubt founded in reason arising out
14 of the evidence in the case or the lack of evidence. It
15 is a doubt which a reasonable person has after carefully
16 weighing all the evidence. Reasonable doubt is a doubt that
17 appeals to your reason, your judgment, to your common sense
18 and experience.

19 It is not caprice, whim or speculation or con-
20 jecture or suspicion. It is not an excuse to avoid the
21 performance of an unpleasant duty and it is not sympathy
22 for a defendant.

23 If after a fair and impartial consideration of
24 all the evidence you can candidly and honestly say you do
25 not have an abiding conviction of the defendant's guilt of

1 lhjb 6 632

2 a particular charge, in sum, if you have such a doubt as
3 would cause you as prudent persons to hesitate before act-
4 ing in matters of importance to yourselves, then you have
5 a reasonable doubt, and in that circumstance it is your
6 duty to acquit.

7 On the other hand, if after such an impartial
8 and unfair consideration of all the evidence you can can-
9 didly and honestly say you do have an abiding conviction of
10 a defendant's guilt, such a conviction as you would be
11 willing to act upon in important and weighty matters of
12 your own life, then you have no reasonable doubt.

13 Under those circumstances, it is your duty to con-
14 vict. Reasonable doubt does not mean a positive certainty
15 or beyond all possible doubt. If that were the rule, few
16 men, however guilty they might be, would ever be convicted
17 because it is practically impossible for a person to be
18 absolutely and completely convinced of any disputed fact
19 which by its nature is not susceptible of mathematical cer-
20 tainty.

21 For this reason, the law in a criminal case is
22 that it is sufficient if the guilt of a defendant is estab-
23 lished beyond a reasonable doubt, not beyond all possible
24 doubt.

25 The indictment in this case contains two counts.

1 lhjb 7 633

2 Each count charges a separate crime and each must be con-
3 sidered separately. You will be asked to give a separate
4 verdict as to each count with respect to each defendant,
5 so there will be four separate verdicts taken.

6 The indictment names two defendants, both of whom
7 are on trial before you. In the determination which you
8 will make, you must bear in mind that guilt is personal.
9 Whether or not any defendant on trial before you has been
10 proved guilty beyond a reasonable doubt of either or both
11 of the charges against him must be determined separately
12 with respect to him and separately with respect to each
13 charge, solely on the evidence presented against him or
14 the lack of evidence.

15 In other words, the case of each defendant stands
16 or falls upon the proof or lack of proof of the charge
17 against him and not against somebody else. For your guid-
18 ance in considering the evidence you have heard, I must
19 tell you there are two classes of evidence recognized and
20 admitted in courts of justice, upon either of which you may
21 find an accused guilty of a crime.

22 One is called direct evidence and the other is
23 called circumstantial evidence. Direct evidence tends to
24 show the fact in issue without need for any further ampli-
25 fication, although, of course, there is always the question

1 lhjb 8 634

2 of whether it is to be believed. Circumstantial evidence
3 is evidence that tends to show facts from which the fact
4 in issue may reasonably be inferred. It is evidence that
5 tends to prove the fact in issue by proof of other facts
6 which you find in accordance with the exercise of your
7 common sense and your human experience has a legitimate
8 tendency to lead the mind to infer or conclude that the
9 facts sought to be established are true.

10 Some of the lawyers referred to the traditional
11 example, when you look out the window of a tall building
12 at the street below, sometimes you can't tell whether it
13 is raining out or not. But when you look out and see that
14 the people in the street have their umbrellas up, if it is
15 a cloudy day, you will certainly come to the conclusion
16 that it must be raining.

17 You have your direct evidence, the evidence of
18 your own sense, that the umbrellas are out, and that con-
19 stitutes circumstantial evidence from which you are entitled
20 to conclude that it is raining.

21 You do not have to eliminate from your thinking
22 or conclusion every fantastic possibility of what other
23 condition might exist. You use your common sense, you
24 consider all the surrounding circumstances and draw your
25 own conclusions, just as you do in the everyday affairs of

1 lhjb 9 635

2 your lives.

3 Circumstantial evidence consists of facts proved
4 from which the jury may infer by a process of reasoning
5 other facts in issue. Circumstantial evidence, if believed,
6 is of no less value than direct evidence, for in either case
7 you must be convinced beyond a reasonable doubt of the guilt
8 of any defendant before he may be convicted.

9 Statements and arguments of counsel are not evi-
10 dence in the case. When, however, the attorneys for both
11 sides stipulate or agree to the existence of a fact, you
12 may, if you see fit, accept the stipulation as evidence
13 and regard that fact as proved. For example, there was a
14 stipulation in this case which was read into the record
15 which concerned the findings of the chemist, William
16 Phillips, who identified a certain substance as cocaine.

17 I instruct you that as to this matter you can
18 consider that stipulation with the same force and effect as
19 if Mr. Phillips had actually come here and taken the oath
20 and testified to that effect. You heard testimony that the
21 Drug Enforcement Agent Crawford destroyed his handwritten
22 notes after having them transcribed into typed reports.

23 If you find that the notes were made for the sole
24 purpose of transferring the data thereon to the final typed
25 reports, and if after having served that purpose they were

1 lhjb 10 636

2 destroyed by the agent, in good faith and in accordance with
3 his normal practice, then I instruct you that the destruction
4 of these handwritten notes is entirely appropriate. It
5 does not constitute an impermissible destruction of evidence
6 nor deprive any defendant of any rights.

7 In determining what evidence you will accept as
8 true, you must make your own evaluation of the testimony
9 given by each of the witnesses and determine what you be-
10 lieve to be the truth and decide the degree of weight you
11 choose to give to that testimony.

12 The testimony of a witness may fail to conform
13 to the facts as they occurred because the witness was
14 intentionally telling a falsehood or because the witness
15 didn't accurately see or hear what he testified about or
16 because his recollection of the event is faulty or because
17 he hasn't expressed himself clearly in giving his testimony.

18 There is no magic formula by which you can evalu-
19 ate the testimony. You bring with you to this courtroom
20 all your experience and background of your own lives. In
21 your everyday affairs, each of you determine for yourselves
22 the reliability of statements made by other people. The
23 same tests, the same common sense you use in your everyday
24 dealings, are the tests which you apply in your delibera-
25 tions as jurors.

1 lhjb 11 637

2 You may, of course, consider the interest or lack
3 of interest of any witness in the outcome of this case.
4 A witness who is interested in the outcome of the case is
5 not necessarily unworthy of belief. The interest of a wit-
6 ness, however, is a factor or a possible motive which you
7 may consider in determining the weight and credibility to
8 be given to his testimony.

9 In doing this you may also consider whether the
10 testimony of a witness is corroborated or borne out by the
11 testimony of others or by exhibits. You may observe and
12 consider the manner in which the witness gives his testi-
13 mony on the stand, the appearance and conduct of the witness
14 in giving his testimony, the opportunity the witness had
15 to observe the facts concerning which he testified, and
16 the probability or improbability of the testimony, in the
17 light of all the other events in the case.

18 These are all items to be taken into your con-
19 sideration in determining the truthfulness and weight, if
20 any, which you will assign to that person's testimony. If
21 such considerations make it appear that there is a dis-
22 crepancy in the evidence, you should consider whether this
23 may be reconciled by fitting the conflicting testimony
24 together, and if that is impossible, you should then deter-
25 mine which of any conflicting versions you will accept.

lhjb 13 639

test the accuracy of his recollection. By your verdict you are not being asked to say whether these men write good reports or not, but you are being asked to say whether or not guilt was proven beyond a reasonable doubt by credible evidence.

In every criminal case there is a rule which every defendant has the privilege and right to rely upon: It is the rule that no defendant is compelled to take the witness stand himself or to offer any testimony or evidence. By pleading not guilty, a defendant has in effect denied the charges on which he is being tried, and he has put into issue every material fact in the accusations against him as they are stated in the indictment.

It is the government which must prove him guilty beyond a reasonable doubt, and he can't be required to testify or disprove anything. An accused person has the right to stand mute, and the fact that he does not take the stand in his own defense may not be considered by you as any indication of guilt or as an admission of guilt or as any evidence of guilt or as the basis for any inference adverse to a defendant whatsoever.

That's a very important rule, and you are charged that in your discussions you shall not have any consideration concerning that matter.

1 lhjb 14 640

2 There has been testimony as to certain statements
3 said to have been made by each defendant to special agents
4 of the Drug Enforcement Administration and to the Assistant
5 United States Attorney, Mr. Levine. You will recall what
6 these statements were and I will not review them at this
7 time.

8 You also remember that at the time that the testi-
9 mony as to these various statements was received in evidence,
10 I cautioned each of you that the statement of one defendant
11 is hearsay as to the other defendant, and in considering
12 the case of a particular defendant you can only consider
13 what he said and you must put out of your mind and dis-
14 regard any statement which he may have made which might
15 seem to you possibly to bear on the activities of anybody
16 else when you consider the case of the other defendant.

17 No person is bound by the statements of somebody
18 else. Any statements that were made by a particular defen-
19 dant after his arrest may be considered only as against
20 that defendant. They have no bearing or significance what-
21 soever with respect to the other defendant.

22 Accordingly, you may consider the statement of
23 a defendant made to a Drug Enforcement agent or to an
24 Assistant U.S. Attorney only in connection with the charges
25 against him and not in connection with the case of the other

1 lhjb 15 641

2 defendant.

3 Furthermore, before you may consider any such
4 incriminating admission or statement, it must appear to
5 your satisfaction that the statement was voluntary, cor-
6 rectly interpreted and made after the person making the
7 statement had been informed of his rights in a language
8 understood by him, and after he had said he understood his
9 rights and had intentionally waived his right to be silent
10 or to have an attorney present.

11 The evidence in this case includes statements
12 said to have been made by defendant Gonzalez at his apart-
13 ment to Special Agents Hall and Crawford and later by
14 Gonzalez at the office of the United States Attorney to
15 Mr. Levine, an Assistant United States Attorney.

16 The evidence also includes statements said to
17 have been made by defendant Castano in the taxi cab in
18 which he was placed following his arrest to Special Agents
19 Hall and Crawford and later at the office of the United
20 States Attorney to Mr. Levine, an Assistant U.S. Attorney.
21 If these statements were voluntary and made knowingly, in
22 the absence of any coercion or threats, after the defendant
23 whose statement you are considering had been read his rights
24 in Spanish, and if the defendant whose statement you are
25 considering understood his rights and intentionally waived

1 lhjb 16 642

2 his rights to remain silent or have an attorney present,
3 then the jury may regard the statement made by such defen-
4 dant as voluntary.

5 If the statements are voluntary and intention-
6 ally made, then and only then such admissions by a defendant
7 of incriminating facts concerning himself are amongst
8 the strongest proofs of that fact known to the law, inso-
9 far as concerns his own case.

10 Nowever, if any statement was involuntary, for
11 example if any defendant was not fully informed of his
12 rights or did not knowingly waive his constitutional rights
13 to remain silent and have a lawyer, or was coerced or
14 threatened, then his statement is entitled to no weight
15 whatever.

16 It is entirely a question for you, the jury, to
17 determine the weight and credibility to be attributed to
18 any such statement which any defendant may have made in
19 reaching your verdict as to his case. This determination
20 involves deciding facts, and as I stated earlier, you, the
21 jurors, are the sole judges as to all the factual issues
22 in this case.

23 The law permits you in determining whether guilt
24 has been proved beyond a reasonable doubt to consider along
25 with the other evidence in the case the conduct of a defendant

1 lhjb 17 643

2 including statements knowingly made and acts knowingly done,
3 upon being informed that a crime has been committed. When
4 a defendant voluntarily and intentionally offers an explana-
5 tion or makes some statement tending to show his innocence,
6 and this explanation or statement is later shown to be
7 false, the jury may consider whether this action by a
8 defendant points to a consciousness of guilt.

9 Ordinarily it is reasonable to infer that an inno-
10 cent person doesn't usually find it necessary to invent or
11 fabricate an explanation or a statement tending to establish
12 his innocence or to lie about innocent conduct. Any such
13 statement is generally referred to as a false exculpatory
14 statement.

15 The government contends in this case that each
16 defendant made a false exculpatory statement at the head-
17 quarters of the Drug Enforcement Administration when he
18 denied that he knew the other defendant, when in fact
19 Castano had stayed at Gonzalez' apartment and they did know
20 each other.

21 Whether this is so, and the significance, if any,
22 of any false exculpatory statement which may have been
23 made, are issues of fact for you to decide. A false state-
24 ment is knowingly made if it is made voluntarily and inten-
25 tionally, and not because of mistake, accident or some other

1 lhjb 18 644

2 innocent reason. The jury will always bear in mind that
3 the law never imposes upon a defendant in a criminal case
4 the burden or duty of calling any witnesses or producing
5 any testimony.

6 You have heard evidence that the government agents
7 in this case were assisted by a person referred to as an
8 informant or an informer, and that they worked undercover
9 and in disguise. These methods frequently are availed of
10 by government agents to obtain leads and to gain intro-
11 ductions and to observe persons suspected of violating the
12 law.

13 There are certain types of crimes, such as the
14 distribution of illegal narcotics, where without deceit
15 and the use of informants, detection would be extremely
16 difficult. There is nothing improper or illegal about the
17 government using an informant or an undercover agent, so
18 long as such use does not violate a defendant's rights.
19 Whether or not you approve of the use of informants and
20 disguises and deceit in an effort to detect law violation
21 is not to enter into your deliberations.

22 Leaving these general matters which I just stated
23 to you, I am going to proceed with the indictment in this
24 case. The first count I will refer to as Count 1, which
25 is called, for ease in reference, the conspiracy count,

1 lhjb 19 645

2 and the second count, which is Count 2, is called the sub-
3 stantive count.

4 I will now read Count 1 of the indictment^R The
5 grand jury charges:

6 1. From on or about the 1st day of January,
7 1976 and continuously thereafter up to and including the
8 date of the filing of this indictment in the Southern Dis-
9 trict of New York, Jose Gonzalez and Jose Vincente Castano,
10 defendants, and others to the grand jury unknown, unlaw-
11 fully, intentionally and knowingly combined, conspired,
12 confederated and agreed together and with each other to
13 violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title
14 21, United States Code.

15 2. It was part of said conspiracy that the said
16 defendants unlawfully, intentionally and knowingly would
17 distribute and possess with intent to districute Schedule
18 1 and 2 narcotic drug controlled substances, the exact amount
19 being to the grand jury unknown, in violation of Sections
20 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States
21 Code.

22 In pursuance of the said conspiracy and to effect
23 the objects thereof, the following overt acts were committed
24 in the Southern District of New York.

25 I will read the overt acts from the indictment in

1 lhjb 20 646

2 just a few moments.

3 The defendants are charged in Count 1 with vio-
4 lating Title 21 of the United States Code, Section 864.
5 It is not important for you to remember the section number,
6 but I do want you all to pay very close attention at this
7 point because I am about to set forth for you the three
8 elements of the crime of conspiracy which that statute
9 forbids.

10 In order to convict either defendant on Count
11 1, the following three essential elements must each be
12 established to your satisfaction beyond a reasonable doubt.
13 If you are not convinced that all three elemtns have been
14 proven beyond a reasonable doubt, then it is your duty to
15 return a verdict of not guilty on Count 1 as to the defen-
16 dant whose case you are then considering. You will consider
17 each defendant separately. The three elements are as
18 follows:

19 First, that the conspiracy charged in Count 1
20 did in fact exist, that is, that two or more persons agreed
21 to violate the federal narcotics laws together, at some
22 point or at or about the time period alleged in the indict-
23 ment, which is mentioned as being from January 1, 1976 to
24 July 23, 1976. That's the first element.

25 Second, that the defendant whose case you are then

lhjb 21 647

considering knowingly and willfully associated himself with the conspiracy and did so with a requisite criminal knowledge and intent. In short, that he became a member of the conspiracy.

The third element is that one of the conspirators committed in the Southern District of New York at least one of the overt acts set forth in the indictment at or about the time and place alleged.

Those are the three elements of the crime of conspiracy. I will discuss each of these elements one at a time.

The first element of Count 1 you must consider is whether the conspiracy charged in this indictment did in fact exist. What is a conspiracy? For our purposes in this case, a conspiracy is simply a combination or an agreement or an understanding reached by two or more members to act together and in concert to commit a crime. Conspiracy is sometimes referred to as a partnership for criminal purposes.

The gist of the crime of conspiracy is the unlawful combination or agreement of two or more people to violate the law together, and the crime of conspiracy is entirely separate and distinct and different from the violation of the law which may have been the object or the

1 lhjb 22 648

2 purpose of the conspiracy.

3 Thus, if a conspiracy exists, even if it should
4 fail in its purpose, the partners in it may still be con-
5 ~~v~~icted, if an overt act was committed in furtherance of
6 the conspiracy. The government is not required with respect
7 to Count 1 to prove an actual violation of the narcotics
8 laws took place, but need only prove that the conspiracy
9 came into existence for the purpose and at or about the
10 times alleged, and that at least one overt act was com-
11 mitted by a conspirator in furtherance of its purpose.

12 To establish that a conspiracy existed, the govern-
13 ment is not required to show that two or more people sat
14 down around a table and entered into a solemn pact or
15 agreement, orally or in writing, stating that they formed
16 a conspiracy to violate the law, setting forth the details
17 of the plans, the means by which the unlawful project is
18 to be carried out or setting forth the part to be played by
19 each.

20 Indeed, it would be extraordinary if there were
21 such a formal document or specific oral agreement. Your
22 common sense will tell you when people in fact undertake
23 to enter into a criminal conspiracy, much is left to the
24 unexpressed understanding. Conspirators usually don't
25 reduce their agreements to writing or acknowledge them

1 lhjb 23 649

2 before a witness, nor do they publicly broadcast or adver-
3 tise their plans.

4 From its nature a conspiracy is almost invariably
5 secret in its origins and execution, but it is sufficient
6 to prove the existence of a conspiracy if two or more per-
7 sons in any manner, through any contrivance, impliedly or
8 tacitly, came to a common understanding to violate the law
9 together. Express language or specific words are not re-
10 quired to indicate assent to or attachment to a conspiracy,
11 nor is it required that you should find that all the con-
12 spirators alleged in the indictment joined in the conspiracy
13 in order to find that the conspiracy existed as charged.
14 You need only find that one of the co-conspirators entered
15 into an unlawful agreement with one or more other persons
16 in order to find that the conspiracy existed.

17 In determining whether there has been an unlaw-
18 ful agreement, you may judge acts and conduct of the alleged
19 conspirators which are done to carry out an apparent criminal
20 purpose. The adage, you have all heard it, actions speak
21 louder than words is applicable.

22 Usually the only evidence available is that of
23 disconnected acts, which if taken together with each other
24 may show a conspiracy to secure a particular result, just
25 as satisfactorily and conclusively as more direct proof.

1 lhjb 650

2 The offense is complete when the unlawful agreement is made
3 and any single overt act to effect the object of the con-
4 spiracy is thereafter committed by at least one co-conspirator.

5 In determining whether the conspiracy charged in
6 this indictment actually existed, you may consider the acts
7 and conduct of the alleged conspirators as a whole and the
8 reasonable inferences or conclusions to be drawn from such
9 evidence. If upon consideration of the evidence you find
10 beyond a reasonable doubt that the minds of at least two
11 of the alleged co-conspirators met in a conspiratorial
12 agreement to work together in furtherance of the unlawful
13 scheme charged in the indictment, that is the possession or
14 distribution of cocaine, then that is proof that the con-
15 spiracy in fact existed, and the first element would be
16 satisfied.

17 The period of time charged, as I mentioned earlier,
18 is from on or about January 1, 1976 to July 23, 1976. It
19 is not necessary for the government to prove that the con-
20 spiracy started and ended on those precise specific days.
21 It is sufficient if you find that the conspiracy was formed,
22 that it existed for some substantial time within the period
23 set forth in the indictment, and that at least one overt
24 act was committed during that period and in this district.

25 The second element of Count 1 which must be proved

1 lhjb 651

2 beyond a reasonable doubt is individual membership in the
3 conspiracy by the person whose case you are then consider-
4 ing. If you do conclude that a conspiracy as charged existed
5 you must next determine -- and you determine separately as
6 to each defendant on trial -- whether he was a member, that
7 is whether he participated intentionally in the conspiracy,
8 with knowledge of its unlawful purpose, and in furtherance
9 of its unlawful objectives.

10 To find that a defendant was a member of a con-
11 spiracy you must find that he knowingly and intentionally
12 participated therein. Thus, mere knowledge by a defendant
13 of the existence of a conspiracy or of any illegal act on
14 the part of the alleged conspirator or mere association
15 with one or more conspirator is not sufficient to establish
16 his membership in the conspiracy.

17 The government must establish beyond a reasonable
18 doubt that the defendant whose case you are considering was
19 aware of its basic purposes and objects, that it entered in-
20 to the conspiracy with a specific criminal intent, that
21 is, with a purpose to violate the law. So if the defendant
22 whose case you are then considering, understanding the un-
23 lawful character of the conspiracy, intentionally engages
24 in actions or advises or assists for purposes of furthering
25 the illegal undertaking, he thereby becomes a knowing,

1 lhjb 652

2 willful participant and a conspirator, and the second ele-
3 ment of Count 1 may be found to have been satisfied.

4 However, I want to caution you again that mere
5 association with one or more of the alleged co-conspirators
6 does not make one a member of the conspiracy, nor is knowl-
7 edge of its existence without participation sufficient to
8 make one a conspirator. To find that a particular defendant
9 was a member of the conspiracy, you must first find that he
10 acted knowingly and willfully, and with specific knowledge
11 and criminal intent.

12 I will discuss the meaning of those words with
13 you at greater length in a few moments.

14 In a conspiracy to distribute narcotics, different
15 members play different parts. It is not the importance
16 of an individual's position in the scheme which determines
17 whether or not guilt was proved beyond a reasonable doubt.
18 Rather the question is whether knowing of the conspiracy
19 and its unlawful purposes, an individual intentionally
20 joined in it and worked toward making it something that he
21 wished to succeed.

22 As to a defendant who was not present at the time
23 of an incident which took place in connection with achiev-
24 ing the objects of a conspiracy, you cannot consider such
25 event as bearing upon the membership of that particular

1 lhjb 653

2 absent defendant in the conspiracy, because whether he
3 joined the conspiracy knowingly and willfully, with knowl-
4 edge of at least some of its unlawful objectives, must be
5 determined as to him solely on the basis of what he said
6 or did or what took place in his presence and not on the
7 basis of what somebody else did when he was not present and
8 not participating.

9 But, all of the testimony in the case may be re-
10 lied on as to any defendant who was present and participated
11 and may apply to both defendants, insofar as concerns the
12 issue of whether or not the conspiracy existed as charged.

13 Now I am coming to the third element, the overt
14 acts. It must appear to your satisfaction beyond a reason-
15 able doubt in order to satisfy the third element that at
16 least one of the conspirators committed an overt act in the
17 Southern District of New York as listed in the indictment.

18 In considering the elements of any count, if you
19 find that the first element was not proven beyond a reason-
20 able doubt as to a defendant, you will cease your delibera-
21 tions as to that particular defendant concerning whom you
22 have reached that conclusion, and it is your duty to find
23 him not guilty on that count. You need not consider as to
24 that count the second and third elements of the particular
25 count or crime.

lhjb 654

You will then consider Count 1 as to the other defendant and determine whether all three elements have been proved beyond a reasonable doubt as to him. The government must prove all three elements. Failure to prove any one of the three will require a verdict of not guilty with regard to the defendant with respect to whom there was such a failure of proof.

(Continued on next page.)

Tlb 1

11ha

655

2

Now I am going to read the overt acts:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

"In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

"1. On or about July 14, 1976, in the Southern District of New York, Jose Gonzalez, the defendant, made a telephone call at approximately 11:50 p.m. from a public telephone booth in the vicinity of the northeast corner of 52nd Street and Eighth Avenue, New York, New York.

"2. On or about July 15, 1976, in the Southern District of New York, Jose Vincent Castano, the defendant, departed 305 East 24th Street, apartment 19G, at approximately 12 midnight.

"3. On or about July 15, 1976, in the Southern District of New York, Jose Vincent Castano, the defendant, possessed approximately nine ounces of cocaine in the vicinity of 51st Street and Eighth Avenue in New York, New York, at approximately 12:20 a.m."

That concludes a reading of the overt acts.

An overt act is any step, action or conduct which is taken to achieve or further or accomplish the objective of the conspiracy. The purpose of requiring proof of an overt act is that parties may

21ha

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

conspire and agree to violate the law together, and after they reach that agreement they may change their minds, they may do nothing to carry it into effect. If that happens, if it was only talk, then no crime has been committed. An overt act -- overt means open, visible -- is an essential element. The commission of an overt act within this district by a member of the conspiracy in furtherance thereof is an essential element to the crime of conspiracy, and a mere agreement without an overt act is not a crime. But the overt act need not be a criminal act, nor need it be the very crime which is the object of the conspiracy.

It is not necessary to prove that each member of the conspiracy committed or participated in an overt act or a particular act, since the act of anyone done in furtherance of the conspiracy becomes the act of all the other members. Also, the government is not required to prove each of the overt acts. It is sufficient if it proves the commission of at least one of the overt acts by any co-conspirators in the Southern District of New York.

You know that Manhattan, that is to say, New York County, is one of the counties that comprise

1 3lha

2 the Southern District of New York.

3 So much for count 1. I will now turn to
4 count 2 of the indictment, the so-called substantive
5 count, which I will now read to you.

6 "Count 2. The Grand Jury further charges:

7 "On or about the 15th day of July, 1976,
8 in the Southern District of New York, Jose Gonzalez
9 and Jose Vincent Castano, the defendants, unlawfully,
10 intentionally and knowingly did distribute and possess
11 with intent to distribute a Schedule II narcotic drug
12 controlled substance, to wit, approximately nine ounces
13 of cocaine."

14 In count 2 of the indictment the defendants
15 are each charged with violating Title 21 of the United
16 States Code, Section 841(a)(1) and Section 841(b)(1)(A).
17 Here again you don't have to remember the numbers but
18 it is essential that you understand what these statutes
19 forbid.

20 These statutes make it unlawful for any
21 person knowingly or intentionally to possess with
22 intent to distribute or to distribute a controlled
23 substance. I instruct you that cocaine hydrochloride,
24 or cocaine, as it is called, is such a controlled
25 substance and is thus within the reach of the statute.

1 41ha

2 Defendants are further charged with violat-
3 ing Title 18, United States Code, Section 2. It
4 provides that whoever commits an offense against the
5 United States, or aids, abets, counsels, commands, in-
6 duces or procures its commission by another, is
7 punishable as a principal.

8 It is not contended by the government in
9 this case that both Gonzalez and Castano actually had
10 physical possession of the cocaine or possessed it
11 with intent to distribute.

12 As to Castano, the government contends that
13 the evidence shows that he had physical possession of
14 the cocaine in that he had it under his arm when he
15 stepped out of a taxicab, that is to say, Exhibit 1
16 in this case in evidence, wrapped in a magazine and
17 contained in a paper bag. You are being asked to
18 infer from all the circumstances in this case that his
19 possession was knowing and wilful and that Castano knew
20 that what he had was cocaine.

21 Insofar as concerns Mr. Gonzalez, however,
22 the contention is that he knowingly and wilfully aided
23 and abetted the commission of this particular offense
24 or crime by his co-defendant.

25 If you find that the government has proved

1 5lha

2 beyond a reasonable doubt that Mr. Castano performed
3 each of the acts of the crime of distribution or possession
4 with intent to distribute cocaine, Mr. Gonzalez may
5 be convicted of the same crime if it has also been
6 proven to your satisfaction beyond a reasonable doubt
7 that he knowingly and wilfully aided and abetted the
8 commission of this crime by Castano.

9 What does it mean to aid and abet the
10 commission of a crime? A person who shares in
11 another person's criminal purposes and encourages and
12 assists the other to carry out that purpose makes himself
13 an aider and abettor and is considered the law as a
14 principal. There is no precise rule as to what
15 acts a defendant must perform in order to constitute
16 himself an aider and abettor in the crime of another
17 person. It is enough if a defendant in some manner
18 associated himself with the illegal venture, partici-
19 pated in it as something that he wished to bring
20 about, or that he sought by his actions to make it succeed
21 and had a stake in the outcome.

22 I must remind you here that you may not
23 find Gonzalez guilty of aiding and abetting unless you
24 are satisfied beyond a reasonable doubt that all the
25 elements of the crime of distributing or possessing

1 6lha

2 with intent to distribute cocaine were committed by
3 Castano and that Gonzalez consciously associated himself
4 with Castano's crime to the extent that his conduct would
5 help Castano succeed in distributing cocaine. There-
6 fore, in order to find that either defendant aided or
7 abetted the commission of this offense, you must
8 be convinced beyond a reasonable doubt that he was knowingly
9 and wilfully doing something to arrange for or aid the
10 commission of this crime by the other defendant, that
11 he was a conscious and knowing participant in the crime,
12 had a stake in its outcome and a purpose to make it
13 succeed, and not just a mere bystander at the scene
14 of a crime committed by the other.

15 Specific criminal intent must be shown in
16 the mind of both the alleged principal, in this case
17 Castano, and the alleged aider and abettor, in this
18 case Gonzalez, beyond a reasonable doubt before you
19 can convict Gonzalez as an aider and abettor

20 When I use the words "specific criminal in-
21 tent," and I used these words before in these instruc-
22 tions, I mean the specific intention to do an act which
23 violates the statute. It is not necessary that a
24 defendant know the particular law which he is violating
25 and it is not necessary that the government show that

1 7lha
2 the defendant has read the statute or has any actual
3 familiarity with the rules. But he must intend to
4 do the act itself which the law forbids. That is,
5 to possess cocaine with the intent to distribute it
6 or to distribute it.

7 Before you can convict the defendant on the
8 second count you must be satisfied that the government
9 has proved all of the elements of the crime of
10 possession with the intent to distribute or distributing
11 cocaine or aiding and abetting someone else to do that
12 act beyond a reasonable doubt.

13 There are three elements to the substantive
14 crime in count 2.

15 First, that on or about the dates set forth
16 in the indictment, the defendant whose case you are
17 concering distributed or possessed with intent to
18 distribute a narcotic drug controlled substance -- that
19 is, cocaine -- or aided and abetted another person who
20 was doing so;

21 Second, that the substance which was distri-
22 buted or possessed with intent to distribute was in
23 fact a narcotic drug controlled substance --
24 that is, cocaine -- and,

25 Third, that the distribution or possession

1 8lha

2 with intent to distribute was done unlawfully, wil-
3 fully and knowingly, with the required criminal in-
4 tent that I just mentioned; and in Gonzalez' case, that
5 the aiding and abetting, if there was any, was also
6 done unlawfully, knowingly and willingly, and with
7 the required criminal intent. I will discuss each
8 of these elements in turn.

9 The first element of this crime will be
10 satisfied if you find beyond a reasonable doubt that
11 the defendant whose case you are considering either
12 intentionally distributed or knowingly possessed cocaine
13 with intent to distribute. If you find either
14 distribution or possession with intent to distribute,
15 this element is satisfied, even though, as I read to you
16 originally, the word "and" is used in the indictment
17 instead of the word "or."

18 The word "distribute" means the actual
19 constructive or attempted transfer of the drug.
20 The word "possession" means either actual physical
21 possession of the drug, that is to say, having it in
22 your hands or under your arm, or having such power or
23 control over the cocaine that you could move it your-
24 self or cause others to move it or deliver it at your
25 direction, for example, through a co-conspirator.

1 91ha

2 The word "intent" refers to a person's state of mind.
3 Thus, the term "possess with intent to distribute" means
4 to control possession of a narcotic drug, with a state
5 of mind or purpose or intent to transfer or cause it
6 to be transferred to such a customer.

7 There is no requirement under this statute
8 that there should be a sale of the cocaine. The
9 second element, is that the substance which was
10 distributed or possessed with intent to distribute
11 was in fact cocaine. You must be convinced beyond a
12 reasonable doubt that the substance which the defend-
13 ants are charged with distributing or possessing with
14 intent to distribute was cocaine. With respect
15 to this question, I have already made an observation
16 with respect to the stipulated testimony of the
17 chemist, William Phillips.

18 The third element is that in distributing
19 cocaine, or in possessing it with intent to distribute
20 it, the defendant whose case you are considering acted
21 knowingly and wilfully. It must also appear to
22 your satisfaction beyond a reasonable doubt that if
23 one of the defendants aided and abetted the other de-
24 fendant, he did so knowingly and wilfully.

25 Knowingly and wilfully are important words.

1 101ha

2 The question is what do the words mean.

3 First let me instruct you as to what they
4 don't mean. They don't mean that the government
5 must show that a defendant knew he was breaking a
6 particular law before he can be convicted of a crime;
7 they don't mean that the government has to show that
8 a defendant intended to profit at the expense of any
9 other person. These words have nothing to do
10 with the defendant's personal or private reasons for
11 violating the statute, for if, after considering all
12 the evidence in accordance with my instructions to you,
13 you come to the conclusion that the defendant violated
14 the statute, then in that event his personal or private
15 reasons for violating the statute are of no con-
16 sequence as far as his guilt is concerned.

17 I instruct you that these words "knowingly"
18 and "wilfully" mean deliberately, intentionally.
19 In other words, you must be satisfied beyond a reason-
20 able doubt that the person whose intent you are con-
21 sidering acted with knowledge, consciously, and in the
22 free exercise of his will. The words "knowingly"
23 and "wilfully" are opposed to the idea of an inad-
24 vertent or accidental occurrence. An act is done
25 knowingly if it is done voluntarily and purposely and

1 111ha

2 not because of mistake.

3 Knowledge and intent, members of the jury,
4 exist in the mind. It is not possible to look into
5 a man's mind to see what is going on or what was going on
6 a few months ago, and the only way you have for
7 arriving at a decision on these matters is to take into
8 consideration all the facts and circumstances shown by
9 the evidence, including the exhibits, and to determine
10 from all such facts and circumstances whether the requi-
11 site knowledge and intent were present at the time in
12 question.

13 Direct proof is not necessary. Knowledge
14 and intent may be proved by circumstantial evidence
15 and may be inferred from all of the surrounding
16 circumstances.

17 I will instruct you at this time that
18 there was no duty on the government to call witnesses
19 equally available to both sides. You are to decide
20 the case on what was brought before you and put in
21 evidence. You may consider the absence of evidence
22 but you may not speculate as to what some witness
23 who was not called might testify to, and no inference
24 adverse to the government results from its failure to
25 call equally available witnesses.

121ha

1
2 You must note, however, that a defendant
3 is not required to call any witnesses or produce
4 any evidence or prove his innocence. The burden
5 to prove the charges beyond a reasonable doubt, if
6 there is to be a conviction, rests upon the government
7 and remains with the government at all times.

8 Under your oath as jurors you cannot allow
9 a consideration of the punishment or possible sentence
10 which may be inflicted upon a defendant, if convicted,
11 to influence your verdict in any way or in any sense
12 to enter into your deliberations. The duty of imposing
13 sentence rests exclusively on the court. Your
14 function is to weigh the evidence in the case and to
15 determine whether or not guilt has been proven beyond
16 a reasonable doubt. You are to do so solely upon
17 the basis of the evidence and the law. You decide
18 the case on the evidence and on the evidence alone,
19 and you must not be influenced by any assumption or
20 conjecture or sympathy or any inference not warranted
21 by the facts unless proven to your satisfaction.

22 If you fail to find beyond a reasonable
23 -doubt that the law has been violated by any
24 defendant, you should not hesitate for any reason
25 to find a verdict of not guilty. But, on the

1 131ha

2 other hand, if you should find that the law has been
3 violated as charged, you should not hesitate because
4 of sympathy or any other reason to render a
5 verdict of guilty as a clear warning that a crime
6 of this character may not be committed with impunity.
7 The public is entitled to be assured of this.

8 I am almost at the end, members of the jury.
9 A word about deliberating.

10 Each juror is entitled to his or her own
11 opinion. Your verdict must be unanimous. Each
12 of you should exchange views with your fellow jurors.
13 That's the purpose of jury deliberations, to discuss
14 and consider the evidence, to listen to arguments with
15 fellow jurors in a friendly and polite fashion, to present
16 your own individual views, consult with one another,
17 and to reach a fair verdict based solely and wholly on the
18 evidence, if you can do so without violence to your
19 individual judgment. Each one must decide the
20 case for himself or herself after discussion with your
21 fellow jurors. You should not hesitate to change
22 an opinion which you may hold which, after discussion,
23 appears erroneous in the light of the discussion as
24 viewed against the evidence and the law. However,
25 if any juror, after carefully weighing all the evidence and

141ha

1 listening to the arguments of fellow jurors, entertains
2 a conscientious view that differs from the others, you
3 are not to give up your judgment simply because you
4 are outnumbered or outweighed. The final vote of
5 each of you must reflect your individual conscientious
6 judgment as to how that particular count and that
7 particular defendant's case should be decided.
8

9 In order to reach a verdict as to any
10 defendant on any count it must be unanimous.

11 It may be in the course of your deliberation
12 you may desire to see some of the exhibits or all of
13 them, or you might want to have some part of the
14 testimony read to you, or you might find you are un-
15 certain as to the meaning of some part of the court's
16 instructions. If anything like that occurs, the fore-
17 man will send out a note. The note will ask for
18 whatever it is that the jury wants.

19 In writing a note, please do not indicate
20 how the jury's vote may then be divided. Simply
21 ask in the note what the jury wants.

22 I would also say to you, please exhaust
23 your own collective recollection by discussion before
24 asking for any testimony to be read. If you do
25 ask for it to be read, try to be precise about exactly

1 151ha

2 what you do want read. If you ask for a copy of the
3 indictment by note, that will be sent in to you also, but
4 as I noted to you earlier, the indictment is merely
5 an accusation and has no status as evidence.

6 Juror No. 1, Miss Fondel, will be the foreman,
7 and she will send out any communications from the jury
8 by delivering a note to the marshal. When the jury
9 has reached a verdict, simply tell the marshal the
10 jury has a verdict and you will be brought back in
11 open court to announce the verdict.

12 In closing, I would just say to you, your
13 oath that you took at the beginning of this trial sums
14 up your duty, and that is that without fear or favor
15 to anyone you will well and truly try the issues
16 between each defendant and the Government of the United
17 States, and a true verdict give, based solely on the
18 evidence and following the court's instructions as to
19 the law.

20 It is important to each of the defend-
21 ants, it is important to the government, it is important
22 to you.

23 Please swear the marshals, Mr. Clerk.

24 (One marshal was duly sworn.)

25 THE COURT: At this time I am going to

1 161ha

2 excuse the alternates. I ask you to do two things. As
3 soon as you are excused go to Room 109. Secondly, do no
4 discuss this case with anybody, do not speak with any
5 of the other jurors or any of the attorneys or
6 anything like that until the trial is over.

7 You may now go to Room 109, and the court
8 thanks you for your attendance at this case.

9 (Alternate jurors excused.)

10 THE COURT: I ask the rest of the
11 jury to remain seated where you are briefly while I
12 confer with the attorneys in the adjoining room to
13 see if there is any additional instruction which they
14 would like to have me mention to you.

15 In this regard I ask you not to discuss the
16 case while you are seated in the box because there is
17 a possibility that I might find it proper to give you
18 additional instructions which you haven't yet received.
19 Please keep your seats and don't talk and I will rejoin
20 you in just a few minutes.

21 (In the robing room.)

22 THE COURT: Mr. Akerman, do you have any
23 further requests or exceptions?

24 MR. AKERMAN: No, your Honor.

25 THE COURT: Mr. Robbins?

BEST COPY AVAILABLE

